

Embassy Wiretaps Defended

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The U.S. government uses wiretaps, spy satellites and other forms of electronic surveillance on foreign officials and governments mainly to gather information to be used in forming its foreign policy, according to court documents on file here.

The legal papers, filed by the Justice Department in a civil suit in U.S. District Court, are believed to contain the first public disclosure by the federal government that the taps — such as those reportedly placed on foreign embassies in Washington — are used mainly for intelligence-gathering purposes and not as protection against espionage or other criminal acts.

"In order adequately to protect itself in a hostile world, the United States cannot depend upon chance to find out what is happening," Justice Department attorneys argued in defense of the wiretap practices.

The legal briefs were filed in a suit by freelance journalist and New York Times reporter Tad Szulc and his wife, who claim wiretaps on which they were overheard were illegal because they were conducted without judicial warrants. Their attorneys are arguing that warrants are required for all government wiretaps, including those placed for foreign intelligence purposes.

Justice Department attorneys said the requirement of asking judges for warrants in foreign intelligence wiretap cases would "endanger legitimate government interests" and "could destroy the usefulness of intelligence sources and methods" if the information was accidentally revealed by the judge.

Judicial warrants are required for other so-called national security surveillances. A recent U.S. Court of Appeals decision here, which was not appealed to the Supreme Court,

requires judicial authorization of any government wiretap unless there is evidence the person or group being wiretapped is acting as an agent of or in collaboration with a foreign government.

In fact, the government said it has already received a

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judicial warrant for one foreign intelligence surveillance since that appeals court ruling.

It went to court in that instance rather than place the tap without a warrant, because "the information available was not deemed sufficient to satisfy the requirement that the subject or subjects of the surveillance was or were agents of, or active collaborators with, a foreign power or foreign political party," according to the brief.

Attorneys familiar with the changing state of wiretap litigation say the warrant in that instance may be the first so-called "national security" warrant ever sought by the federal government for a wiretap.

Much of the government's lengthy brief focused on the numerous court decisions involving wiretaps, and specifically dissected the recent appeals court ruling here.

The government argued that the Attorney General and the President — not federal judges — should decide whether to authorize foreign intelligence wiretaps by weighting the public interest against the effects of the surveillances on individual rights.

Government attorneys singled out the Strategic Arms

Limitation Talks, relations in the Mideast and economic and trade relations with other countries as examples of diplomatic situations where advance information on other governments' views is necessary.

"The potential dangers presented in diplomatic confrontation are perhaps more subtle, but no less serious than direct, physical confrontation," Justice Department attorneys said in the brief authorized by Assistant Attorney General Richard L. Thornburgh.

Foreign intelligence surveillances "may be virtually continuous in operation" and there may be no individuals who are "specifically predetermined targets," government attorneys added.

"Such a surveillance would be designed to gather foreign intelligence information helpful in understanding a foreign government's policy or which would assist in the formulation of the United States' own foreign policy," the government attorneys said.

The added that wiretaps, satellites and confidential informants "provide advance indicators of foreign policy initiatives," although conceding that at least one country — The Soviet Union — reportedly counsels its diplomats to assume that their telephone conversations will be monitored in the United States.